

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 569/2006
(Punjabrao Ramrao Deshmukh Vs. Mohd.Hafiz Sk.Abdulla)

Appeal
Application No.
Writ petition

District :
of 200

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. Khadse, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.

DATED : 4th September, 2007.

Heard the learned counsel for the appellant.

The appellant is the original plaintiff. The appellant had filed a suit against the defendant/respondent for recovery of an amount of Rs. 33,250/- on the basis of an agreement dated 24.04.1996. The plaintiff had obtained loan from Central Bank of India and purchased a truck. However, the plaintiff sold the truck to the defendant and on 24.04.1996, the defendant entered in an agreement with the plaintiff and agreed to pay the loan of the Central Bank of India as also the Vidarbha Development Corporation Limited. The defendant, however, failed to repay the loan of the Central Bank of India as well as the Vidarbha Development Corporation Limited and further failed to return the amount to the plaintiff as

per the agreement. The plaintiff, therefore, sought the recovery of Rs.33,250/- along with interest.

The defendant denied that the defendant and plaintiff had executed an agreement on 24.04.1996 as pleaded by the plaintiff. The defendant further denied that he agreed to pay the loan along with interest thereon. The defendant further pleaded that the plaintiff was doing money lending business and on 30.10.1995, the plaintiff had agreed to sell his truck to one Kayyum for a consideration of Rs.65,000/-. It was also pleaded that in the said transaction, the defendant was a mediator. The defendant pleaded that a false agreement was prepared by the plaintiff by obtaining the signature of the defendant on a blank stamp paper as the defendant had never purchased any truck from the plaintiff.

The trial Court, after considering the evidence tendered by the parties on record, held that the plaintiff proved that the defendant had agreed to pay the loan of Central Bank and of Vidarbha Development Corporation Limited along with interest. The trial Court consequently held that the suit filed by the plaintiff was liable to be decreed. The Court granted interest @ 6% per annum from the date of the institution of the suit till its realisation.

The appellate Court, however, in an appeal

filed by the defendant, reversed the findings recorded by the trial Court, by the judgment dated 14.03.2006. The first appellate Court reappreciated the material evidence tendered by the parties on record to hold that the plaintiff failed to prove that he sold the truck to the defendant and gave the same in his possession in the year 1992. The Court further held that the agreement dated 24.04.1996 was not a genuine one and was not enforceable in law. The appellate Court, therefore, reversed the judgment and decree passed by the trial Court. The appellate Court, after considering the material evidence on record, recorded the reasons in paragraph no.25 of the judgment for holding that the agreement dated 24.04.1996 was not a genuine one.

The findings recorded by the first appellate Court are pure findings of fact based on a proper appreciation of the material evidence on record. They do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE